

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Tarun K. Arora Conf. No. 1208
Appln. No. : 10/699,052
Filed : October 31, 2003
Title : DISCRETE ABSORBENT ARTICLES
Art Unit : 3761
Examiner : Hand, Melanie J.

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January 26, 2009

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January 26, 2009

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MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

This Appeal Brief is being filed in reply to the Examiner's final rejection of claims 31-37 in the Final Office Action dated June 19, 2008.

1. REAL PARTY IN INTEREST

The real party of interest of the present application on appeal is the assignee, McNeil-PPC, Inc.

2. RELATED APPEALS AND INTERFERENCES

There are no currently pending appeals or interferences relating to the present pending Patent Application.

3. STATUS OF THE CLAIMS

Claims 31-37 are pending in this application and have been finally rejected in the Final Office Action dated June 19, 2008. Claims 31-37 are on appeal. Claims 1-30 were canceled without prejudice during prosecution.

4. STATUS OF THE AMENDMENTS

Claims 31-37 were not amended in the Response to the Final Office Action filed November 19, 2008. In the Advisory Action dated December 12, 2008 the Examiner stated that the November 19th Response was not entered because it did not "present new or persuasive arguments overcoming the claim rejections." C

5. SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention embodied by the subject application on appeal is directed to an absorbent article including a substantially transparent body-faceable layer, a substantially transparent barrier layer, and a substantially transparent liquid absorbent system arranged between the cover layer and the barrier layer.

Claim 31 is the sole independent claim pending in the application. Antecedent support for each element of claim 31 is noted in the parenthesis following each claim element.

31. (Previously Presented) An absorbent article comprising:

a substantially transparent body-faceable, liquid-permeable cover layer (element 31 in Figure 2A and 2B, page 2 paragraph [0022]);

a substantially transparent, liquid-impermeable barrier layer (element 35 in Figure 2A and 2B, page 5 paragraph [0047]);

a substantially transparent liquid absorbing absorbent system arranged between said cover layer and said barrier layer (element 100, in Figure 2A and 2B, page 2 paragraph [0025]), wherein said absorbent system is substantially free of cellulosic material (page 4, paragraph [0035]) and comprises a mixture of a hot melt adhesive and a liquid-absorbing polymer (page 3 paragraph [0027] and page 3 paragraph [0030]).

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 31-37 were finally rejected under 35 USC 103(a) as being unpatentable over Carlucci et al. (US2003/0065299) in view of Luizzi (EP1013291 A1) and further in view of Ahmed et al. (US6534572).

7. ARGUMENT

1. Are claims 31-37 obvious under 35 USC 103(a) in view of Carlucci et al., Luizzi and Ahmed et al.?

It is respectfully submitted that the cited references fail to teach or suggest the claimed invention, either alone or in combination.

Claim 31 recites, in part, that the claimed absorbent article includes “a substantially transparent liquid absorbing absorbent system arranged between said cover layer and said barrier

layer, *wherein said absorbent system is substantially free of cellulosic material* and comprises a mixture of a hot melt adhesive and a liquid-absorbing polymer”. (Emphasis Added) It is respectfully submitted that a close review of the cited references reveal that they fail, either singularly or in combination, to disclose and/or suggest an article including such a structure.

US Patent Application Publication No. 2003/0065299 to Carlucci et al. purports to disclose a transparent absorbing article. In one embodiment the absorbent core of said transparent article includes a water based hydrogel adhesive. This reference fails to disclose or suggest the use of a mixture of a hotmelt adhesive and a liquid absorbent polymer in the manner of the claimed invention. This reference also fails to disclose the use of such a mixture in an absorbent system that is free of cellulosic material in the manner of the claimed invention according to claim 31.

EP1013291 to Luizzi discloses a hot melt adhesive mixture that is capable of absorbing aqueous liquids, the mixture may include a liquid absorbing polymer. Luizzi also discloses an absorbent article including such hot melt adhesive mixture, the article having a cover layer 10, barrier layer 20 and an absorbent element 30. The hot melt adhesive mixture 40 adheres the cover 10 to the absorbent element 30. It is noted that Luizzi does not specify that the absorbent element 30 is free of cellulosic material in the manner of the claimed invention nor does Luizzi suggest the use of a hotmelt adhesive mixture in a transparent article.

In the Non-Final Office Action dated November 29, 2007 (hereinafter referred to as the November 29th Office Action) the Examiner suggested that it would be obvious to one of skill in the art to modify the hydrogel material taught by Carlucci to further include the hot-melt adhesive and liquid absorbent hydrogel polymer mixture taught by Luizzi. (See November 29th Office Action, p. 4). The Examiner’s position is respectfully traversed. Hot melt adhesive is typically applied at an elevated temperature, accordingly if a hot melt adhesive was applied to the hydrogel adhesive of Carlucci the water in the hydrogel adhesive would evaporate causing serious processing problems. Further, the water in the hydrogel adhesive would be absorbed by the liquid absorbent polymer further resulting serious processing problems and rendering the

polymer ineffective at absorbing additional fluid during actual use of the article. Accordingly, it is submitted that it would not be obvious to one of ordinary skill in the art to make the combination proposed by the Examiner to thereby arrive at the claimed invention.

The Examiner in the November 29th Office Action cited Ahmed to purportedly support the Examiner's position that the hydrogel adhesive of Carlucci could be combined with the hotmelt adhesive superabsorbent mixture of Luizzi. Specifically the Examiner states:

"... Ahmed teaches an adhesive comprising a thermoplastic layer having a wax that, when cooled surrounds and either encapsulates a superabsorbent polymer, or forms an additional layer adjacent thereto as desired. Ahmed teaches that the adhesive improves the gel rate, making the gel rate faster when compared to using SAP particles alone. Thus, it would be obvious to one of ordinary skill in the art to combine the hydrogel adhesive of Carlucci with the hot melt adhesive of Luizzi so as to create an absorbent adhesive having a faster gel rate as taught by Ahmed , thus trapping exudate more quickly." (June 19th Office Action, p. 4)

As discussed in detail below, it is respectfully submitted that one of skill in the art would not be motivated to combine the hydrogel adhesive of Carlucci with the hotmelt superabsorbent mixture of Luizzi based upon the disclosure of Ahmed as suggested by the Examiner. Ahmed purports to disclose a composition comprising a thermoplastic composition and at least one superabsorbent polymer (SAP). (Col. 5, ll. 8-14) Purportedly, this composition improves the fluid handling properties of the superabsorbent polymer by providing the superabsorbent with a faster gel rate. (Col. 4, ll. 30-36) It is submitted that if one of skill in the art was to employ the composition disclosed in Ahmed, as suggested by the Examiner, it would **further exacerbate** the problems of a combining a hydrogel with a superabsorbent hotmelt mixture. Namely, since the composition of Ahmed allegedly makes the superabsorbent **more absorbent**, it would cause the superabsorbent to absorb the water in the hydrogel even more "effectively", thus further exacerbating the problems of combining a hydrogel with a superabsorbent hotmelt mixture. ***Thus, as opposed to solving the problem of combining a hydrogel with a superabsorbent***

hotmelt mixture, the composition disclosed in Ahmed would in fact further exacerbate these problems.

In response to the above arguments the Examiner in the Final Office Action dated June 19, 2008 (hereinafter the June 19th Office Action) stated:

"This is not persuasive because hot melt adhesive is not applied to a substrate and then melted. The temperature at which the adhesive melt is reached prior to application to a substrate or article in order to produce a spreadable adhesive to make the application possible or easier. Thus, the adhesive of Luizzi has already reached this temperature prior to coating in an article such as Carlucci, at which point it cools to room temperature. The water in the hydrogel of Carlucci would only evaporate if the entire article were heated to the melt temperature of the adhesive of Luizzi ..." (Office Action, p.3)

It is respectfully submitted that the Examiner's arguments are unpersuasive. Specifically, the Examiner *acknowledges* that in order for the hot melt adhesive and liquid absorbent polymer mixture of Luizzi to be applied to the article of Carlucci then such hot melt mixture *must* be at an elevated temperature in order for the adhesive to be "spreadable". However, the Examiner then concludes that the hydrogel of Carlucci would only evaporate if the entire article were heated to the melt temperature of the adhesive of Luizzi. It is not clear why the Examiner has reached this conclusion. If the hot melt adhesive of Luizzi must be heated in order to be "spreadable" as acknowledged by the Examiner, and must be applied to the article of Carlucci at such elevated temperature state (which it must otherwise it would cease to be "spreadable"), then it will cause the water in the hydrogel of Carlucci to evaporate. *No other conclusion can possibly be reached.*

Further, as noted above, the water in the hydrogel adhesive of Carlucci would be absorbed by the liquid absorbent polymer of Luizzi further resulting serious processing problems and rendering the polymer ineffective at absorbing additional fluid during actual use of the article. The Examiner did not appear to address this problem whatsoever in Final Office Action.

In view of the above, allowance of the present application is respectfully requested.

Respectfully submitted.

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Date: January 26, 2009

8. CLAIMS APPENDIX

Claims 1.-30. (Canceled)

31. (Previously Presented) An absorbent article comprising:

- a substantially transparent body-faceable, liquid-permeable cover layer;
- a substantially transparent, liquid-impermeable barrier layer;
- a substantially transparent liquid absorbing absorbent system arranged between said cover layer and said barrier layer, wherein said absorbent system is substantially free of cellulosic material and comprises a mixture of a hot melt adhesive and a liquid-absorbing polymer.

32. (Previously Presented) The absorbent article according to claim 31, wherein said absorbent system consists essentially of a substantially transparent liquid absorbing coating consisting essentially of said hot melt adhesive and said liquid-absorbing polymer.

33. (Previously Presented) The absorbent article according to claim 31, further comprising:

- a substantially transparent separating layer arranged between said cover layer and said absorbent system.

34. (Previously Presented) The absorbent article according to claim 33, wherein said substantially transparent separating layer is free of fibrous material.

35. (Previously Presented) The absorbent article according to claim 34, wherein said liquid-absorbing polymer comprises a superabsorbent polymer.

36. (Previously Presented) The absorbent article according to claim 35, wherein the article has a light transmittance of greater than about 45%.

37. (Previously Presented) The absorbent article according to claim 36, wherein the separating layer comprises a fibrous material having a denier in a range from about 1.5 denier per fiber (dpf) to about 15 dpf.

9. **EVIDENCE APPENDIX**

None

10. **RELATED PROCEEDINGS APPENDIX**

None